

Macarthur Legal Centre

FAMILY LAW MATTERS SERIES: DIVISION OF PROPERTY



Useful Contacts

- Macarthur Legal Centre can provide **free** property settlement information and referrals. **Contact us on: (02) 4628 2042.**
- Visit the Family Law Courts Website www.familylawcourts.gov.au for more information.

PROPERTY

Property settlement principles apply to both **marriages and de facto relationships**.

The *Family Law Act 1975* (Cth) provides a four-stage process in property division matters:

1. **Identify and value all assets, liabilities and financial resources** (including superannuation) **and liabilities**;
2. **Assess the contributions of the parties** (both financial and non- financial);
3. **Consider whether there should be any adjustments for the future needs of the parties** (e.g. age, health, care of children, ability to earn etc.); and,
4. **Overall, what is just and equitable.**

There is no requirement for parties to seek legal intervention post-separation. In fact, the majority of separating couples are able to amicably decide on property division.

Disclaimer: The above content is information only, and does not constitute legal advice. You should seek independent legal advice about your particular circumstances.



Where parties agree:

If you and your ex-partner agree about how to divide your property, you can have an informal or formal agreement. The *Family Law Act 1975* (Cth) provides for “formal agreements” in the form of Financial Consent Orders and Binding Financial Agreements. These “formal agreements” **are legally enforceable**.

If parties would like to apply for Property Consent Orders, they can fill out an *Application for Consent Orders* together with their proposed terms of settlement. The proposal must contain **full and frank disclosure** of the current financial position of the parties. The filing fee for Consent Orders is currently \$145. The Court will only sanction the Orders if they appear to be “**just and equitable**” in the circumstances.

Where parties do not agree:

If there is no agreement between you and your ex-partner about how to divide your property, you can attempt mediation, legally assisted negotiation, collaborative law, conciliation, or arbitration. If that does not work, you may need to apply to the Court for Property Settlement Orders.

In order to apply to the Court for Property Settlement Orders, parties can file an *Initiating Application* with the Court. In these cases, a judge will make a determination on the issue (if the parties cannot reach a settlement before the Court hearing). This means a third party, the Judge, will make decisions about how your property should be divided.

In the majority of cases, parties will need to satisfy the Court that they have made a **genuine effort** to reach an agreement, outside of Court, before commencing litigation. This will usually involve participation in one or more of the above listed processes.

Property Orders are considered to be “final” orders, that is, Orders which finalise the parties’ financial relationship. Accordingly, the Court will only entertain applications to vary Property Settlement Orders in **very limited** circumstances. The Court does, however, have a wide range of powers to enforce Financial Settlement Orders, where parties fail to comply.

Time Limitations

If you are married you have **twelve (12) months, from the date of divorce**, to apply to the Court for Property Settlement Orders.

If you are in a de facto relationship you have **two (2) years from the date of separation**, to apply for Property Settlement Orders.

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